SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
JUL 24
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1730

ROBERT M. ROSE, M.D., DORIS D. ROSE,
Appellants,

versus

COMMISSIONER OF INTERNAL REVENUE,
Appellee.

REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION

ROBERT M. ROSE, M. D.
4440 Magnolia Street
New Orleans, Louisiana 70115
PRO SE

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1730

Robert M. Rose, M.D.
Doris D. Rose
Petitioners

v.

Commissioner of Internal Revenue
Respondent

REPLY TO RESPONDENT'S MEMORANDUM IN OPPOSITION

Respondent had until July 9th to file a reply brief to the petition for certiorari in this case.

On July 15th, Petitioner received copies of a "Memorandum for the Respondent in Opposition", with a return receipt form dated: "Air Mail: July 12, 1974". (Appendix A). Petitioner has not been informed as to the date on which the "Memorandum" was filed with the Court. Had the "Memorandum" been filed by July 9th, Petitioner should have been notified on the date of filing. The "Memorandum" has evidently been filed out of time and,

therefore, by statute, should not be received by this Court.

Since Petitioner has not been advised of the date on which the "Memorandum" was filed, Petitioner's reply to the "Memorandum" follows.

The "Memorandum" is not a brief in reply to the petition for certiorari, as is allowed by statute. It disregards and makes no reply to the issues of fact or of law raised in the petition, and it reiterates the false and therefore fraudulent case fabricated by the Tax Courts and presented by those Courts and by the Commissioner's attorneys as Petitioner's case, when in truth and in fact, it is not Petitioner's case at all.

Suzanne and her mother were by no means "seeking a more healthful climate". Each move they made was medically prescribed and was for the climatological treatment of Suzanne's recurrent anoxic convulsions, after all other treatment had failed.

Statement in the "Memorandum", that the Tax Court's "findings of fact are actually favorable to Petitioners" and that there was "no dispute that their daughter was intensely ill" begs and seeks to divert this Court from the issue presented by this case. The degree of Suzanne's illness is not at issue. What is at issue are the medical facts of the exact nature of Suzanne's illness, which facts have been falsely and therefore fraudulently "found" by the Tax Courts; the treatment Suzanne received mandated by and medically prescribed

for that illness; and whether costs of food and lodging essential to the treatment of that illness, which expenses are allowed medically deductible by statute and are not denied by Congress' expressed intent, in illnesses such as Suzanne's, should not in fact be allowed in her case.

Such costs are denied by the Commissioner's Regulations Sec. 1. 213-1(e)(iv). It is incontestable that the Commissioner has altered the wording and the meaning of Congress' expressed intent in forming those regulations, and the regulations deny costs of food and lodging as ever being deductible medical expenses, except when part of a hospital bill. The total denial made by those regulations is not supported by statute or by Congressional statement of intent, is the issue of law to be resolved in this case.

The medical facts of Suzanne's illness are completely different from the medical facts of Bilder's illness. The total and all inclusive denial of costs of food and lodging ever being a deductible medical expense, as the Commissioner has legislated in his regulations, was not at issue in Bilder, (Com. v. Bilder, 369 U. S. 499) and was not affirmed by the Bilder decision, yet is currently attributed to that decision. Such holding is a misapprehension of law which, since it is based on this Court's Bilder decision, it can only be corrected by this Court, and should be corrected.

In the "Memorandum" is complaint that the specific errors and frauds of the Tax

Court are not set forth in the Petition. They are not set forth for the reason that the Petition for Certiorari is not a Brief. The errors and frauds of the Tax Courts are set forth where they belong, in Petitioner's Brief to the Fifth Circuit Court of Appeals. That Brief is part of the record requested transmitted to this Court under this Court's rule 21, 1.

Respondent's "Memorandum" not only may have been filed out of time, it is deceptively titled. It is not a reply brief, as allowed by statute. It is, in truth, a motion for dismissal of the petition for certiorari in this case, and should not be received by this Court, under this Court's Rule 24, 2. Additionally, Respondent's "Memorandum" fails to raise any valid factual or legal reason for continuing to deny Petitioner decision based on the true facts of his case and the issue of law on which his case is based, and particularly since decision on such basis is guaranteed to him by the "fair trial" clause of the Fifth Amendment to the United States Constitution, for which reasons the Writ of Certiorari should be issued in this case, as petitioned.

Respectfully submitted,

Robert M. Rose, M.D., Pro Se

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Date: July 22, 1974

APPENDIX

Form No. G-26a
(Rev. 9-10-65)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

ROBERT M. ROSE AND DORIS D. ROSE,
PETITIONERS

vs.

COMMISSIONER OF INTERNAL REVENUE

No. 73-1730

Service of FIVE copies of MEMORANDUM FOR THE RESPONDENT IN OPPOSITION,

is acknowledged this 15th day of July, 1974.

ROBERT M. ROSE

Air Mail: July 12, 1974
Note: Please date, sign and return this acknowledgment to:
OFFICE OF THE SOLICITOR GENERAL
Department of Justice
Washington, D. C. 20530